

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1348 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

LALLUBHAI K RATHOD

Versus

BOTAD NAGARPALIKA

Appearance:

MR SV PARMAR for Petitioner

MR PM THAKKAR for Respondents No.1, 2, 4 and 5

None present for Respondent No.3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/05/1999

ORAL JUDGEMENT

1. The petitioner employee of the respondent No.1 filed this petition under Article 226 of the Constitution under which he challenges the resolution dated 22.1.1997 of the respondent No.1 promoting the respondent No.3 as

Octroi Inspector.

2. Further challenge has been made to the order dated 31.1.1997 under which the Chief Officer was directed to allow to respondent No.3 to officiate as Octroi Inspector till the decision of the civil suit filed by respondent No.3.

3. Facts of this case in brief are that the petitioner joined the service of the respondent No.1 on 1.4.1972 as Naka Karkun. He belongs to Scheduled Caste. Vide resolution dated 19.11.1996 respondent No.1 decided to give effect to the reservation policy. On the same day seniority of the clerical posts was finalised in which the name of the petitioner is there at Sr.No.8. Under the order dated 15.7.1996 respondent No.3 was given additional charge of the post of Octroi Inspector. Vide order dated 22.1.1997 he was promoted as Octroi Inspector. The respondent No.3 having apprehension that the District Collector, Bhavnagar may not exercise his powers under section 258 of the Gujarat Municipalities Act of suspending the resolution under which he was given promotion, he filed Regular Civil Suit No.83/97 in the court of Civil Judge (Senior Division), Bhavnagar. Alongwith the suit he filed application for grant of temporary relief. The Civil Court granted ex-parte interim relief to maintain status quo. In pursuance of the order of the Civil Court the President of respondent No.1 passed the order that respondent No.3 shall be allowed to perform duties as Octroi Inspector till the decision of the civil suit. The petitioner has challenged the promotion of the respondent No.3 on the post of Octroi Inspector on the ground that he was eligible for promotion and he being a scheduled caste he should have been given promotion.

4. It has further been contended that, he is a senior most candidate in reserved category and he should have been given promotion. It has next been contended that the respondent No.3 is at Sr.No.11 in the seniority list. Otherwise also he has preferential claim of the promotion.

5. Special Civil Application has been opposed by the respondent No.3. Respondents No.1 and 2 have also filed replies to the Special Civil Application.

6. Heard learned counsel for the parties.

7. It is not in dispute that respondent No.3 is junior to the petitioner. In the reply to the Special Civil Application it is not the case of the respondents No.1 and 2 that the case of the petitioner has been considered for promotion and he was not found suitable. Respondents No.1 and 2 have come up with the case that for promotion to the post of Octroi Inspector qualification required is SSC passed and five years experience. The petitioner, as per the case of the respondents No.1 and 2 which is also not disputed by the learned counsel for the petitioner, has not passed SSC, and therefore, he was not eligible for promotion to the higher post. Respondent No.3 was taken to be eligible for promotion and accordingly he was given promotion.

8. In reply to the Special Civil Application learned counsel for respondents No.1 and 2 have not made reference to any rule or regulation or resolution prescribing thereunder qualification for promotion to the post of Octroi Inspector. It is an admitted fact by the respondents No.1 and 2 that post of Octroi Inspector is a promotion post. More so, recruitment to the post of Octroi Inspector is by promotion and it is perfectly within the competency of respondents No.1 and 2 to laid down qualification for the same, but merely by stating that SSC and five years experience is the qualification for promotion to the post of Octroi Inspector in the affidavit is not sufficient nor it can be relied upon. It is not a matter of some private shop or show-room or trade. It is a matter which pertains to constitutional authority and recruitment and other service conditions of its employees are to be regulated either under the Act as framed by the legislature of the State or rule framed thereunder or by some Government resolution, circular or under the resolution of respondent No.1.

9. In reply to the Special Civil Application this has not been come out. The matter has come up for hearing on 28.4.1999, on which date this court has given opportunity to the learned counsel for respondents No.1 and 2 to produce before this court relevant rules relating to appointment and service conditions of the employees of respondents No.1 and 2. Today learned counsel for respondents No.1 and 2 has not produced any resolution of the respondent No.1 or any Act or rule of the State Government under which for promotion to the post of Octroi Inspector qualification of SSC plus five

years experience is laid down. In absence of any Act, rule, regulation, bye-laws or resolution of respondent No.1 non-consideration of the case of the petitioner for promotion on the post of Octroi Inspector on the ground that he was not possessing requisite qualification is certainly arbitrary and violative of Articles 14 and 16 of the Constitution.

10. In the result, this Special Civil Application succeeds and the same is allowed and promotion of respondent No.3 on the post of Octroi Inspector is declared to be contrary to Articles 14 and 16 of the Constitution. The respondent No.1 is directed to consider the case of the petitioner for promotion on the post of Octroi Inspector and in case he is found suitable for promotion, he shall be given promotion accordingly. Rule is made absolute in the aforesaid terms. The respondent No.1 is directed to pay Rs.5000/- as costs to the petitioner. The petitioner is scheduled caste and low paid employee, he has been denied his fundamental right of consideration for promotion on most arbitrary and perverse ground. A person junior to him has been given promotion on the higher post. The petitioner for protection of his service right has to approach to this court under Article 226 of the Constitution as promotion of respondent No.3 on the post of Octroi Inspector is made in violation of the provisions of Articles 14 and 16 of the Constitution. In view of these facts costs has been awarded in favour of the petitioner. Learned counsel for the petitioner made a statement before this Court that he has charged Rs.5000/- from the petitioner towards his professional fees.

(S.K.Keshote,J.)

(pathan)